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IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

OMAR TAYLOR,
Petitioner
v.
STATE OF ALABAMA,
Respondent

On Writ of Certiorari to the Supreme Court of Alabama

BRIEF AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF PETITIONER OMAR TAYLOR

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INTEREST OF AMICUS [1]

The American Civil Liberties Union is a nation-wide, non-partisan organization of over 250,000 members, dedicated solely to defending the principles of freedom and democracy embodied in the Bill of Rights.

Central to those freedoms is the right to be free from unreasonable government searches and seizures protected by the Fourth Amendment of the United States Constitu-

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[1] Letters of consent to the filing of this brief from the parties have been lodged with the Clerk of the Court.

tion. That Amendment erects a critical barrier between the government and the citizen, and defines the standards which the government must follow whenever it seeks to invade "the right of the people to be secure in their persons."

The ACLU has repeatedly urged upon this Court a "strict construction" of that Amendment. In *Brown v. Illinois*, 422 U.S. 590 (1975) and *Dunaway v. New York*, 442 U.S. 200 (1979) this Court specifically suppressed confessions obtained pursuant to illegal arrests to further the independent Fourth Amendment interests at stake.[2] The Supreme Court of Alabama has ignored the mandate of these decisions and condoned police conduct which can only be described as an intentional disregard of the Fourth Amendment. It is the purpose of this brief to demonstrate that affirmance of the Supreme Court of Alabama opinion will lead to continued intrusions on the Fourth Amendment rights of every citizen.

STATEMENT OF THE CASE

On December 2, 1978, three black males robbed Moseley's Grocery Store in Montgomery, Alabama. This was one of a number of robberies that had occurred within the period of a few weeks in the same area of Montgomery. As part of their investigation, the police interviewed several individuals they suspected of being involved in the robberies. App. at 7.[3]

One of the persons interviewed as a suspect was Charles Martin, who, at the time of the interview, was in-

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[2] The ACLU filed an *amicus curiae* brief in *Dunaway*.

[3] The facts are taken from the opinions of the Supreme Court of Alabama and the Alabama Court of Criminal Appeals as well as from the trial transcript and transcript of the Hearing on the Motion to Suppress, which are contained in the joint appendix. Citations are to the joint appendix ("App. at ——") and the portions of the transcript to the Hearing on the Motion to Suppress which are not included in the joint appendix. ("Hearing on Motion to Suppress, Tr. at ——").

carcerated on charges of rape and robbery in an unrelated matter. App. at 2. Martin was interviewed by Officer R. D. Mobeley. Martin denied any involvement in the robberies but told Officer Mobeley he "had heard that [petitioner] was involved in the robbery of Moseley's Grocery." App. at 36. Martin did not tell Officer Mobeley how or from whom he obtained this information. App. at 8.

Officer Mobeley made no attempt to determine the accuracy of the information about petitioner's involvement in the robbery or the credibility or reliability of Martin. App. at 8-10. Instead, he passed the information along to two officers assigned to the Robbery-Homicide Division of the Montgomery Police Department. App. at 6. Approximately two weeks later, on January 4, 1979, at about 3:00 p.m., these two officers arrested petitioner as he walked out of a pool hall. The arrest was made without a warrant and based solely on the word of Martin that he had heard petitioner was involved in the robbery. App. at 26. There is nothing in the record to indicate that the police did anything during the two weeks before petitioner's arrest to substantiate Martin's story or to obtain a warrant for petitioner's arrest. App. at 37.

The officers told petitioner that he was under arrest for the robbery of Moseley's Grocery Store. Petitioner was searched for weapons, placed in the patrol car, read his constitutional rights, and driven to the police station. Upon his arrival at the station, petitioner was questioned by detectives about the robbery. He denied any involvement. This initial interrogation lasted approximately twenty minutes. App. at 11.[4]

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[4] Many of the facts are taken from petitioner's testimony at the hearing on the motion to suppress. Much of his testimony regarding the events after his arrest was uncontroverted.

After being interrogated, petitioner was fingerprinted and placed in a lineup. The owners of the grocery store, who were present at the time of the robbery, were unable to identify petitioner. App. at 38. The lineup lasted approximately one hour and petitioner was then placed in a jail cell. App. at 12.

Approximately ten minutes later, two detectives took petitioner to an office for more interrogation. One of the detectives told petitioner that his fingerprints matched a set of prints found on merchandise handled by one of the robbers.[5] The detectives also examined a photograph in front of petitioner and told him that he resumbled one of the robbers. Petitioner requested to see an attorney. App. at 13. The detectives told petitioner that "[he] could get one" and returned him to his cell.[6] App. at 13. At no time did he consult with an attorney.

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[5] Petitioner testified that he was confronted with his fingerprints after the second round of interrogation at the station house. One of the interrogating officers, Detective Hicks, corroborated petitioner's testimony. Hearing on Motion to Suppress, Tr. at 36. On redirect, however, Hicks testified that he did not confront petitioner with the information on the matching fingerprints until after petitioner signed a waiver of rights form. *Id.* at 40. The Alabama Court of Criminal Appeals concluded that petitioner was confronted with the matching prints before waiving his rights App. at 28, 34.

[6] Petitioner's testimony at the suppression hearing raises a substantial question whether he understood what his rights were when he was informed of them. When the prosecutor asked, "Did you understand those rights that they read to you?", petitioner responded in part, "I was understanding that I signed the form that I would be given an opportunity to speak with a Lawyer." App. at 16. The police testimony does not dispute this. When asked what he did "to make sure [petitioner] understood his rights," Detective Hicks testified: "We read the rights form to him. Let him read one copy as I read it to him. And he signed it at the bottom of the copy." Hearing on Motion to Suppress, Tr. at 28. *See also* App. at 21.

Detective Hicks testified that petitioner never requested an attorney, although petitioner testified to the contrary. App. at 13, 21. Because the issues of whether petitioner understood his rights and

Later that evening, after petitioner had been in custody for more than five hours, two detectives removed him from his cell for more interrogation. As he was being led to an office, he noticed that his girlfriend and two of his neighbors were present at the police station, but he was not allowed to meet with them at that time.

The police led petitioner to an interview room and again resumed their interrogation. Petitioner again refused to admit any involvement in the robbery.

After petitioner refused to make a statement, the detectives brought his neighbor, Charles Williams, into the room. App. at 14. They asked petitioner whether he knew and trusted Williams. Petitioner testified that one of the detectives said, "[M]e and Charles been knowing each other for a long time . . . . Charles been doing me favors." *Id.* Williams responded, "Yeah, he do me favors." *Id.* The detectives again told petitioner that they knew he had robbed the grocery store and that his fingerprints from the store would stand up in any court. Hearing on Motion to Suppress, Tr. at 36.

Finally, the detectives brought petitioner's girlfriend into the room. The group in the room then included petitioner, Williams, the girlfriend, and the detectives. App. at 14. The detectives told petitioner that he faced a sentence of ten years to life for committing the robbery, but that he could help himself if he signed a statement. *Id.* One of the detectives told petitioner that if he cooperated, "he would talk to the judge, and it is a possibility that he could get [petitioner] a suspended sentence

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the propriety of the continued interrogation after a request for counsel were not raised at trial, this factual dispute is not directly relevant to the issues before this Court. Failure by the police to honor a request for counsel clearly violates an individual's constitutional rights. *Edwards v. Arizona*, 101 S. Ct. 1880 (1981).

[or] probation."[7] *Id.* Petitioner's girlfriend became upset and began to cry. *Id.* The detectives then left the room. Approximately ten minutes later, they returned and petitioner confessed.

At trial petitioner moved to suppress the confession and the fingerprints taken after his arrest on the ground that his arrest had been illegal and the confession and fingerprints were fruits of the illegal arrest. The trial court excluded the fingerprints but admitted the confession. Petitioner later was fingerprinted at trial and these prints were admitted into evidence. App. at 19-20. In addition, a fingerprint expert who previously had examined the suppressed prints testified at trial that petitioner's fingerprints matched the fingerprints found at the grocery store.

Petitioner was found guilty of robbery and sentenced to thirty years. The Alabama Court of Criminal Appeals reversed the trial court's denial of the motion to suppress the confession, holding that under this Court's decisions in *Brown v. Illinois*, 422 U.S. 590 (1975) and *Dunaway v. New York*, 442 U.S. 200 (1979) the confession was the fruit of an illegal arrest. The Supreme Court of Alabama reversed, distinguishing *Brown* and *Dunaway* on the basis that six hours had passed between the time of the illegal arrest and confession and on the presence of intervening circumstances.[8] Petitioner filed a petition for a writ of certiorari which this Court granted.

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[7] Detective Hicks testified that while he might have told petitioner that the judge would be informed if petitioner cooperated, he did not make any explicit promises of leniency. Hearing on Motion to Suppress, Tr. at 31.

[8] Besides distinguishing *Brown* and *Dunaway* the court apparently applied a balancing test weighing the costs of the exclusionary rule against its benefits. App. at 41. Such an analysis finds no support in either *Brown* or *Dunaway*. The court, of course, was bound to apply federal law. *Cooper v. Aaron*, 358 U.S. 1 (1958).

SUMMARY OF ARGUMENT

There is no dispute that petitioner's arrest was without probable cause and therefore was illegal. The Supreme Court of Alabama held, however, that the taint of petitioner's illegal arrest was purged and that his confession and the expert testimony at his trial about the suppressed fingerprints were properly admitted into evidence. That decision cannot be reconciled with this Court's decision in *Brown v. Illinois*, 422 U.S. 590 (1975), *Dunaway v. New York*, 442 U.S. 200 (1979), and *Davis v. Mississippi*, 394 U.S. 721 (1969).

The Supreme Court of Alabama attempted to distinguish *Brown* and *Dunaway* on several bases. The court pointed to the time between petitioner's arrest and confession and events which it characterized as intervening circumstances. Neither distinction is persuasive. The court's distinction on the basis of the length of time and presence of intervening circumstances cannot withstand scrutiny. During the six-hour period between petitioner's illegal arrest and confession he was fingerprinted, placed in a lineup, interrogated three times, and kept in a jail cell. At no time did petitioner have an opportunity to consult with an attorney, although he testified at the suppression hearing that he requested to do so. Finally, in the presence of his neighbor and girlfriend, petitioner was confronted with the evidence the police claimed to have against him. It eviscerates this Court's decisions in *Brown* and *Dunaway* to hold that the six hours between petitioner's illegal arrest and his confession, under the circumstances, attenuated the taint of that illegal arrest.

Similarly, the weight given by the Supreme Court of Alabama to petitioner's meeting with his girlfriend and neighbor during the six hour ordeal misreads this Court's decisions in *Brown* and *Dunaway*. Petitioner's meeting with his girlfriend was carefully orchestrated by the police. Its purpose was not to provide petitioner an opportunity to assess objectively his situation, but to pressure him into making a confession. In the presence of his girlfriend, the police told petitioner of the severe

consequences of his conviction and the advantages of cooperation. At this point petitioner's girlfriend became upset and began to cry. Within ten minutes of this outburst petitioner confessed. This bears no resemblance to the type of intervening circumstances this Court found sufficient in *Johnson v. Louisiana*, 406 U.S. 356 (1972) to remove the taint of an illegal arrest.

The fact that petitioner was given his *Miranda* warnings in this case is irrelevant to the Fourth Amendment question presented. The circumstances in which each set of warnings was given clearly indicate that they could not have contributed to a decision by petitioner to exercise free will. To give significance to *Miranda* warnings in this case would, as this Court recognized in *Brown*, substantially undermine the deterrent purpose of the exclusionary rule. This is especially true where, as here, the police misconduct in violating the Fourth Amendment is flagrant and purposeful.

Finally, the trial court's admission of expert testimony about petitioner's suppressed fingerprints at his trial undermined its earlier decision to suppress those fingerprints. The effect of that decision was to circumvent petitioner's rights under the Fourth Amendment.

ARGUMENT

I. PETITIONER'S ARREST WAS ILLEGAL

There can be no dispute that petitioner's arrest was illegal. It was made without a warrant and without probable cause. Decisions of this Court have consistently required probable cause to make an arrest. *E.g.*, *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975), *Brinegar v. United States*, 338 U.S. 160, 176 (1949). This requirement for probable cause extends not only to an arrest characterized as such under state law but also to those cases in which the seizure "intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest." *Dunaway v. New York*, 442 U.S. at 216; *see also Davis v. Mississippi*, 394 U.S. 721 (1969).

Respondent does not contend, nor could it, that the informant's unsubstantiated tip was sufficient to provide probable cause for petitioner's arrest. *See Spinelli* v. *United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964). Indeed, at the suppression hearing the prosecutor stated, "[I]t is not my position that [the tip given by the informant] Charles Martin gave this Detective information which amounted to probable cause."[9] App. at 4. The trial court's suppression of the fingerprints taken after petitioner's arrest indicates that it too believed that petitioner's arrest was made without probable cause. The only issues before this Court, therefore, are whether petitioner's confession and the expert fingerprint testimony should have been suppressed as fruits of the illegal arrest.

II. PETITIONER'S CONFESSION WAS OBTAINED THROUGH EXPLOITATION OF THE ILLEGAL ARREST AND THEREFORE SHOULD HAVE BEEN SUPPRESSED

In *Brown v. Illinois*, 422 U.S. 590 (1975) and *Dunaway v. New York*, 442 U.S. 200 (1979) this Court identified three factors which must be analyzed to determine whether a confession obtained subsequent to an illegal arrest is so tainted by the illegal arrest that it is inadmissible: 1) the temporal proximity between the illegal arrest and the confession; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the police conduct. *Brown*, 422 U.S. at 603-04; *Dunaway*, 442 U.S. at 218.[10] These three factors are to be considered in light of the primary purpose of the exclusionary rule—deterrence of illegal police conduct.

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[9] In the present case petitioner's arrest and detention exceeded the scope of the less intrusive seizures condemned in *Davis* and *Dunaway*. Petitioner was arrested, searched for weapons, placed in a patrol car, and driven to the police station where he was interrogated, fingerprinted, photographed and placed in a cell.

[10] The State has the burden of proving that the confession and expert fingerprint testimony were not tainted by the illegal arrest. *See Brown*, 422 U.S. at 604.

Temporal proximity and the presence of intervening circumstances are relevant to the causal connection between the illegal police conduct and the confession. The closer the causal connection between the illegal police conduct and confession, the greater the likelihood that admission of the confession will encourage illegal police conduct. Conversely, the less the causal connection between the illegal arrest and confession, the more likely the confession is the result of the defendant's free will rather than the illegal police misconduct.[11] *See Wong Sun v. United States*, 371 U.S. 471 (1963). Similarly, the more flagrant the police misconduct the more likely the admission of the confession will encourage disregard of Fourth Amendment rights by the police.

The Supreme Court of Alabama correctly stated the test of *Brown* but disregarded that decision's mandate that the analysis "must be [made] on the facts of each case." *Brown*, 422 U.S. at 603. Only if a court performs this critical analysis can it determine whether admission of the confession is consistent with the distinct policies and interests of the Fourth Amendment. *Brown*, 422 U.S. at 602.

A. The Six Hour Time Lapse Between the Illegal Arrest and Confession Did Not Attenuate the Taint of the Illegal Arrest

The Supreme Court of Alabama distinguished *Brown* and *Dunaway* on the basis that petitioner "had been under arrest for more than six hours when he made his statement," as opposed to less than two hours in *Brown* and *Dunaway*. App. at 41. This facile distinction which focuses only on the length of time rather than the conditions of the detention completely overlooks the entire basis for this Court's decision in *Brown*.

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[11] The Court's emphasis on whether a confession is a result of a defendant's free will is intended to further the separate policies which underlie the Fourth Amendment and is a required inquiry independent of and in addition to the threshold requirement that the confession satisfy the Fifth Amendment test of voluntariness. By referring to "free will" the Court is concerned solely with the causal connection between the illegal arrest and confession. *Brown*, 422 U.S. at 602.

The Alabama Supreme Court completely failed to analyze how this six hour lime lapse could have weighed in favor of a finding that the confession was a product of free will. Only if this inquiry is made can a court determine whether suppression of the confession would further the independent Fourth Amendment policies at issue. The Court in *Brown* expressly required that "consideration of a statement's admissibility [be done] in light of the distinct policies and interests of the Fourth Amendment." *Brown*, 422 U.S. at 602.

The Supreme Court of Alabama ignored these policies and instead used a rigid analysis which can be best summarized as follows: because six hours is longer than two hours, the confession is more likely to be a product of free will. This analysis completely ignores the factual circumstances of petitioner's six hour detention which could only have frustrated petitioner in any attempt to exercise free will, and is directly contrary to this Court's statement in *Rawlings v. Kentucky*, 448 U.S. 98, 107 (1980) that "it [is] necessary to examine the precise conditions under which the [individual was] detained." [12]

A chronology of petitioner's six hours of detention reveals that he was interrogated twice alone and once in the presence of his girlfriend and a neighbor. The final interrogation session ended in an emotional outburst by petitioner's girlfriend. In the time between the various interrogation sessions petitioner was fingerprinted, placed in a lineup, and photographed. Between these various investigative procedures petitioner was placed in a jail cell for periods ranging from ten to twenty minutes.

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[12] *See also Wong Sun v. United States*, 371 U.S. 471, 486 (1963). To be sure, in both *Wong Sun* and *Rawlings* the Court was discussing temporal proximity in the context of a confession which followed the illegal detention by a short amount of time. However, the emphasis the Court placed on the circumstances of the detention is no less relevant in considering a lengthier period of time. The critical issue remains the petitioner's free will and whether he has time to carefully consider the alternative choices outside of the coercive pressures of police investigative procedures.

Nowhere in its opinion does the Supreme Court of Alabama give any indication when or how in this six hour time period petitioner had the opportunity to consider carefully his situation and exercise his own free will. Petitioner was constantly being shuttled back and forth between a jail cell and interrogation or other investigative procedures. Time spent in an interrogation room or while subjected to other police investigative procedures certainly cannot be considered time available for petitioner carefully to consider his options. Such careful consideration is essential to the exercise of free will. The inherently coercive nature of these procedures could only frighten and confuse petitioner rather than permit him to make a decision based on free will. Nor could the short periods of time between the various procedures have given petitioner the necessary time to consider his situation. No sooner than petitioner was returned to his cell, the police would remove him for more interrogation and investigation.

The emphasis by the Supreme Court of Alabama on the length of time rather than the conditions of petitioner's confinement during that time severely undercuts the deterrence policy which is the basis of this Court's decision in *Brown*.[13] The effect of this ruling is to allow the police to purge the taint of an illegal arrest simply by processing the individual through the typical police investigative procedures.[14] This ability to purge the taint by conduct-

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[13] Also, from the standpoint of judicial application of the Court's test in *Brown*, focusing simply on the length of time can only lead to confusing results. For example, if six hours weighs in favor of a finding of absence of taint but two hours does not, what effect is a court to give to a three hour or four hour time lapse. It is evident that the necessary line-drawing required by *Brown* is meaningless and unbounded unless the courts are required to apply the factor of temporal proximity in light of the policies of the Fourth Amendment.

[14] Presumably, the reasoning used by the Supreme Court of Alabama would similarly apply even if the petitioner had been interrogated for six consecutive hours.

ing "business as usual" at the police station cannot be squared with the importance this Court in *Brown* placed on the deterrence of illegal police conduct.

B. The Police Used Petitioner's Meeting With His Girlfriend and Neighbor to Exploit the Illegal Arrest and Obtain a Confession

The reliance by the Supreme Court of Alabama upon petitioner's meeting with his girlfriend and a neighbor as an intervening factor has absolutely no factual support.

The facts surrounding the meeting clearly indicate that the police sought to intimidate and frighten petitioner's girlfriend so that she would urge him to confess. Initially, it is important to remember that prior to the meeting petitioner had been interrogated twice and each time denied being involved in the robbery. Also, the only witnesses to the robbery, the owners of the grocery store, were unable to select petitioner from a lineup. The weakness of the case was evident; it became critical to obtain a confession. It was in this context that the police resumed the last round of interrogation. When petitioner again denied any involvement in the robbery the police brought in his neighbor, Charles Williams, who was acting in cooperation with the police.[15] When petitioner did not confess the police brought his girlfriend into the room.[16]

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[15] As with petitioner's girlfriend the police continued to interrogate petitioner in Williams' presence. The decision to bring Williams into the room only reinforces the clear fact that the police used the third parties solely to obtain a confession. Petitioner testified that the police told petitioner that Williams often did the police "favors" and that Williams likewise was the recipient of police "favors."

[16] There is a factual dispute over whether petitioner, at that time, requested to talk to his girlfriend or whether the police brought her into the interview room on their own. Petitioner testified that it was the decision of the police to bring her into the interview room. App. at 14. Detective Hicks, the interrogating officer, testified that the petitioner had asked to see his

With petitioner's girlfriend present the officers continued the interrogation. In her presence the officers stated that petitioner faced "ten years to life" but that the judge would be informed of any cooperation by petitioner. At this point, petitioner's girlfriend became upset and began to cry. The officers then left the room and approximately ten minutes later petitioner confessed.[17]

This meeting was the essence of police exploitation of an illegal arrest. It borders on the incredible for the Supreme Court of Alabama to have relied upon this meeting to conclude that the confession was a result of petitioner's free will. Indeed, it could have had only the opposite effect—increasing the psychological and emotional pressures on petitioner to confess.[18]

Just how far the Supreme Court of Alabama was off the mark is clear from comparing the facts of this case to *Johnson v. Louisiana*, 406 U.S. 356, 365 (1972), which was cited in *Brown* as an example of an intervening circumstance. *Brown*, 422 U.S. at 603-04. In *Johnson*, the defendant challenged a lineup held after an illegal arrest. Between the time of the illegal arrest and lineup the defendant, represented by an attorney, was presented to a magistrate. The Court held that this purged the taint of the illegal arrest.

The distinctions between *Johnson* and this case are obvious and give an indication of what factors might be

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girlfriend. Hearing on Motion to Suppress, Tr. at 31, 35. This factual dispute is irrelevant to the disposition of the case. The outrageous behavior of the police at the meeting leaves no doubt that regardless of who initiated the meeting, the meeting was designed to exploit the illegal arrest and in no way contributed to petitioner's exercise of free will.

[17] It is not clear if only Detective Hicks left the room or whether both of the detectives and Williams left petitioner and his girlfriend in private. App. at 14.

[18] *Rawlings v. Kentucky*, 448 U.S. 98 (1980) is distinguishable. In *Rawlings* there was no attempt by the police to exploit the relationship between the defendant and a female companion.

important in determining whether the intervening circumstance contributed to the exercise of free will.[19] Neither Williams nor petitioner's girlfriend was in any position to provide petitioner with objective advice to aid him in the exercise of free will. Although Williams was petitioner's neighbor, he was known to cooperate with the police. *Cf. Fare v. Michael C.*, 442 U.S. 707, 720 (1979) (request to speak to probation officer not equivalent to request to speak to lawyer because probation officer is agent of the state and thus may not be able to act in best interest of accused). Nor was petitioner's girlfriend able to provide petitioner with objective advice, since she was emotionally involved in the entire matter. Neither the neighbor nor petitioner's girlfriend can be compared to a neutral judicial officer.[20]

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[19] The Supreme Court of Alabama cited *Johnson* to support its conclusion that the filing of an arrest warrant between the time of the illegal arrest and confession could remove the taint. *Johnson* clearly does not support such a position. The significance of the Court's citation to *Johnson* in *Brown* is of course related to the ultimate question of whether the petitioner exercised free will in deciding to confess. Filing of an arrest warrant had absolutely no effect on the petitioner's ability to exercise free will. In contrast, presentation to a neutral magistrate would have given petitioner an opportunity to receive an explanation of his rights from someone other than a police officer and also remove him from the coercive environment of police custody.

To accept the conclusion of the Supreme Court of Alabama would be to encourage police officers to make illegal arrests knowing that the taint could be removed merely by the after-the-fact justification of filing an arrest warrant.

[20] *See also Brown*, 422 U.S. at 611 (Powell, J., concurring) (to purge taint would require presentation to magistrate or consultation with attorney). Also, in *Johnson* the defendant was represented by a lawyer when presented to the magistrate. The Court in *Johnson* did not attribute especial significance to the presence of a lawyer. In other instances, however, the Court has expressly recognized the unique role a lawyer can play in assisting the accused in a decision on whether to exercise his Fifth Amendment privilege. *See Fare v. Michael C.*, 442 U.S. at 719 (1979).

Moreover, even if Williams or petitioner's girlfriend had been in a position to assist petitioner to make an independent decision neither of them could have provided petitioner a complete or accurate appraisal of his rights or alternative choices.[21] In contrast, a magistrate has knowledge of the law and particularly the rights of the accused.

Finally, petitioner's meeting with his girlfriend and Williams was almost entirely in the presence of the police. When both Williams and petitioner's girlfriend came into the interview room the police remained and continued their interrogation. From the first moments of the meeting the police created an intensely emotional atmosphere in the room which only increased the pressures on petitioner to confess. This was not a meeting in which petitioner could converse freely and independently with third parties. At all times petitioner remained within the reach of his accusers and could get no respite from their incessant interrogation. This situation hardly can be compared to the relatively pristine environment of a magistrate's courtroom.

In sum, this case does not present the kind of intervening circumstance contemplated by *Brown*. The only difference between this case and *Brown* is that here the police attempted to use more concerted methods to obtain a confession through exploitation of the illegal arrest. The Court in *Brown*, however, warned that courts must cerefully assess the facts of each case because "the possibilities of misconduct [are] too diverse." *Brown*, 422 U.S. at 603. Far more than in *Brown*, the evidence of police exploitation of the illegal arrest is clear.

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[21] For example, petitioner's girlfriend may well have believed that the detective had the power to make a binding promise of leniency of sentence if petitioner confessed and may have so advised petitioner.

C. The Giving of *Miranda* Warnings Was Irrelevant in the Circumstances of this Case

The Supreme Court of Alabama placed substantial emphasis upon the fact that petitioner had been given his *Miranda* warnings on three separate occasions.[22] The fact that petitioner was advised of his constitutional rights as required by *Miranda* does not support a finding that the confession was untainted by the illegal arrest. The context in which the warnings were given to petitioner indicates that the Supreme Court of Alabama grossly overestimated their significance. The Court in *Brown* specifically warned against placing too much emphasis on the fact that *Miranda* warnings are given.[23] 422 U.S. at 603.

The first set of *Miranda* warnings was given at the time of petitioner's arrest. It is unclear whether petitioner understood his rights at that time; the arresting officers certainly made no effort to determine whether petitioner understood them.[24] Petitioner was given a

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[22] Placing any significance on the fact that *Miranda* warnings were given on three separate occasions overlooks the clear fact that the police therefore had continually interrogated petitioner. This continued interrogation certainly was an attempt to exploit the illegal arrest. Thus, to give any significance to repeated Miranda warnings would be an implicit approval of continued interrogation as a means of purging the taint of the illegal arrest.

[23] In *Dunaway* the Court clarified this statement in *Brown* by concluding that *Miranda* warnings only go toward satisfying the initial Fifth Amendment requirement of voluntariness. *Dunaway*, 442 U.S. at 217. This, of course, follows from the fact that failure to give *Miranda* warnings alone would be a basis for suppressing the confession, making the entire *Brown* analysis unnecessary. *Cf. Rawlings v. Kentucky*, 448 U.S. 98, 107 (1980).

[24] The arresting officer, Officer Alford, testified that "I did not ask him anything concerning his rights. I just advised him of his rights." App. at 27. This routine manner of simply reading petitioner the *Miranda* warnings without asking him if he understood his rights indicates that this set of warnings is insignificant as a factor indicating that petitioner confessed out of an act of free will. *See also* note 6 *supra*.

second set of Miranda warnings while being put through the panoply of station house booking and investigation procedures. He was advised of his rights a third time, just before he confessed, after the highly emotional meeting with his girlfriend. In the context of this case the fact that petitioner was advised of his *Miranda* rights three times is irrelevant.

D. Petitioner's Confession Should Have Been Suppressed Because of the Flagrant Disregard by the Police of the Fourth Amendment

The actions of the officers involved in the investigation and arrest of petitioner demonstrate a total disregard for firmly established constitutional standards. Petitioner was arrested on the basis of an unsubstantiated informant's tip. At the time of the arrest this Court had long ago unequivocally condemned the practice of relying on an informant when there is no independent basis for concluding that the informant is reliable or credible. *See Spinelli v. United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964). None of the officers denied knowledge of the requirements of these cases. Yet the officers intentionally chose to ignore their mandate.

The failure to make any attempt to verify the informant's tip or determine whether the informant was reliable cannot be explained by lack of time. Approximately two weeks passed between the officer's conversation with the informant and the arrest of petitioner, but no effort was made to use less intrusive investigative techniques.

Nor can the arresting officers justify their conduct by arguing that the seizure of petitioner was not an arrest requiring probable cause. The officers informed petitioner that he was under arrest for the robbery of the grocery store and the events which followed demonstrate that the seizure of petitioner was not intended as anything other than a full-blown arrest.

In short, petitioner's arrest was clearly investigative. Instead of using normal—and constitutional—police investigative techniques, the officers arrested petitioner for the purpose of engaging in a "fishing expedition."

In such a clear case of flagrant and purposeful disregard of an individual's constitutional rights the failure to suppress the confession can only serve to encourage illegal police behavior. Admission of this confession into evidence would be viewed by the police as judicial approval of police practices which the officers knew, and certainly should have known, were prohibited by the Constitution. Only by suppression of the confession can the police be deterred from engaging in such flagrant violations of the Constitution.

III. THE TESTIMONY OF THE FINGERPRINT EXPERT SHOULD HAVE BEEN SUPPRESSED AS A FRUIT OF THE ILLEGAL ARREST

The trial court properly suppressed the first set of fingerprints as being the fruit of petitioner's illegal arrest. Thereafter, however, petitioner was fingerprinted at trial and these prints were admitted into evidence. The fingerprint expert (whose testimony was based on the illegally seized fingerprints), testified regarding similarities between the petitioner's fingerprints and the fingerprints found at the scene of the robbery. This testimony was clearly derived from the illegally obtained fingerprints and therefore should have been suppressed. *United States v. Crews*, 445 U.S. 463 (1980).

In *Crews* the police obtained a photograph of defendant while he was being illegally detained. Victims of the crimes then selected that photograph from a photo array. Two days later the victims selected defendant out of a lineup. Finally, one victim identified defendant at trial. Defendant sought to suppress all of the identification testimony as being tainted by the photograph obtained during his illegal detention.

The Court held that while the photo array identification should have been suppressed, the in-court identification was properly admitted. This difference stemmed from the fact that the in-court identification was based not on the police showing the victims the photograph obtained through the illegal seizure, but rather on the victims' independent ability to recall the defendant's identity. This ability antedated the unlawful arrest.

Unlike the witness in *Crews*, the expert in this case had no independent basis, other than the illegally obtained evidence, to conclude that petitioner's fingerprints matched those found at the grocery store. Nor did the expert's opinion regarding the fingerprints antedate the illegal arrest and fingerprinting of petitioner. Unlike the in-court identification in *Crews*, the testimony of the expert in this case was a result of the police exploitation of the illegal arrest and must be suppressed. This conclusion follows from this Courts' opinion in *Davis v. Mississippi*, 394 U.S. 721, 725-26 n.4 (1969).

CONCLUSION

The judgment of the Supreme Court of Alabama should be reversed. The confession and expert fingerprint testimony clearly were tainted by the illegal arrest, and therefore should have been suppressed.

Respectfully submitted,

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